



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Mcdowell v Douglas, 2023 ONLTB 26199

Date: 2023-03-24

File Number: LTB-L-039080-22

In the matter of: UNIT 1, 2150 ADJALA-TECUMSETH TOWN LINE RR1 TOTTENHAM
ON L0G1W0

Between: Mervin McDowell Landlords
Susanna McDowell

And

Katherine Douglas Tenant

Mervin McDowell and Susanna McDowell (the 'Landlords') applied for an order to terminate the tenancy and evict Katherine Douglas (the 'Tenant') because:

- the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on March 9, 2023.

The Landlords Mervin McDowell and Susanna McDowell and the Landlord's Legal Representative Nicole Fazzari attended the hearing.

As of 9:56 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. This L2 application seeks the eviction of the Tenant because the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On June 22, 2022, the Landlord mailed the Tenant an N12 notice of termination, deemed served on June 27, 2022. The termination date on the notice was August 31, 2022.
4. The Landlord paid the Tenant compensation equal to one month's rent by cheque on August 31, 2022.

Good Faith

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5. Section 48 of the Act has been interpreted by the Courts as requiring only that a landlord establish that they genuinely intend to move into the unit and live there for residential purposes for at least one year (*Feeney v. Noble*, 1994 CanLII 10538 (ON SC), [1994] O.J. No. 2049 (Div. Ct.)). Neither the reasonableness of the landlord's intention, nor the fact that the landlord may have other motives for wanting to occupy the unit, nor the fact that there might be other available alternatives is the issue (*Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.), and *Feeney v. Noble*). However, the surrounding circumstances may provide circumstantial evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists (*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct.))
6. The Landlords' evidence was they live on the main floor of their two storey house. The upper floor of the home contains two rental units. Their evidence was they have grown tired of living in the small space the main floor provides and would like to live in the entire home.
7. The Landlords' evidence was they are aware of the potential consequences of making this application in bad faith. Their evidence was they plan to reside in the entire home for the rest of their lives.
8. Based on the uncontested evidence of the Landlords, I find on a balance of probabilities that the Landlords genuinely intend to live in the rental unit for a period of at least one year and as a result I find the N12 Notice was served in good faith.

Section 83 Considerations

9. The Landlords sought eviction within 11 days of this order. I asked the Landlords if they were aware of any circumstances the Tenant may be experiencing that would make an eviction unfair and they were aware of none. They did however point out the tenancy has been a lengthy one as the Tenant has lived in the rental unit for approximately 10 years time.
10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until April 9, 2023 pursuant to subsection 83(1)(b) of the Act. The

Landlords did not submit any evidence that satisfied me there was any urgency to their request. I am mindful that since the N12 notice was served on the Tenant, they have had over 9 months to prepare for the possibility of having to find alternate living arrangements. However, the Tenant has lived in the rental unit for approximately 10 years. Postponing the eviction date until April 9, 2023, which is one month from the hearing date, provides the Tenant some additional time to find new living accommodations.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 9, 2023.

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2. If the unit is not vacated on or before April 9, 2023, then starting April 10, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after April 10, 2023.

March 24, 2023

John Cashmore

Date Issued

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 10, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

